

DELTA PROTECTION COMMISSION

14215 RIVER ROAD

P.O. BOX 530

WALNUT GROVE, CA 95690

Phone (916) 776-2290

FAX (916) 776-2293

E-Mail: dpc@citlink.net Home Page: www.delta.ca.gov

**AGENDA ITEM #10**

March 12, 1999

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: CALFED Revised Phase II Report, December 18, 1999; Issues to be Included in Proposed Comment Letter

NOTE: The Commission's CALFED Committee will meet on Wednesday, March 24, 1999 at 4:00 p.m. in the Mello Farms Conference Room to discuss this staff report. Based on the recommendations of the Committee, a revised staff report may be distributed at the Commission meeting on Thursday, March 25, 1999.

Background:

At the January 1999 meeting Dick Daniel of CALFED briefed the Commission on the Revised Phase II Report and the Commission received copies of the Executive Summary of the Report. Steve Mello, Chair of the CALFED Subcommittee and staff have reviewed the full report and suggest the Commission send a comment letter to CALFED which identifies and indicates support for the policy statements which support the Commission's May 1998 comments on the Draft EIR/EIS (see attached copy of May 1998 comment letter). In addition, there are some policy statements which should be clarified or revised, as indicated below.

Staff Recommendation:

After receiving comments from the CALFED Subcommittee, review staff report and direct staff to send a comment letter to CALFED in support of most policy statements and requesting clarification and/or modification of some other policies.

**Policy Statements Which Support the Commission's Position as Expressed in May 1998
Comment Letter or Support Commission's Plan:**

The following policies illustrate changes in the proposed CALFED program which respond to the Commission's earlier comments and indicate conformance with Commission Act and Plan. The Revised Phase II Report does not contain any major conflicts with the Commission's Act and Plan:

p. 35, 41, 46: "Strategy of the CALFED Program is to initially develop a through-Delta conveyance based on the existing Delta configuration with some channel modifications."

P. 42: "The program intends to minimize the conversion of farmland, including prime and unique farmland, to the extent possible. In addition to its overall approach of acquiring land in voluntary transactions with willing sellers, CALFED is proposing to adopt several implementation policies that will minimize the adverse impacts to agricultural land and water resources. They include:

- Maintaining land in private ownership to the greatest extent practicable.
- Prioritizing use of existing government owned lands for habitat restoration.
- Working with local landowners and organizations to develop projects that meet CALFED objectives while also benefitting local landowners.

P. 42: "The Long-Term Levee Protection Plan will bolster and maintain the Delta Levees that protect important agricultural resources, infrastructure, habitat and water quality."

P. 43: "Many of the proposed program actions serve multiple benefits, including public benefits. The could include protection of key Delta functions including agricultural and levee system integrity, conveyance and ecosystem restoration."

P. 61: "CALFED seeks to preserve as much agricultural land as possible during implementation in Phase III consistent with meeting all Program goals...Acquisition of fee title to land will be from willing sellers only, and will be used when neither available government land nor partnerships are appropriate or cost effective for the specific need...Agricultural resources are an important feature of the existing environment of the state and are recognized and protected under CEQA and state and federal policy...one of the major principles of the State's agricultural policy is to sustain the long-term productivity of the State's agriculture by conserving and protecting the soil, water and air which are agriculture's basic resources. It is CALFED policy that adverse environmental effects to agricultural resources resulting from CALFED programs, projects, and actions will be fully assessed and disclosed under CEQA and NEPA and avoided or mitigated as required by law. Assessment, disclosure, and avoidance and other mitigation strategies shall be developed at the programmatic and project-specific levees in consultation with other state, federal, and local agencies with special expertise or authority over agricultural resources which may be affected by the Program, such as California Department of Food and Agriculture."

P. 62: "CALFED agencies have also agreed that coordination shall not constrict or limit the agencies in carrying out their statutory responsibilities. Numerous activities are programs are ongoing or proposed that convert agricultural land to habitat for fish, wildlife and wetland purposes...To the extent that these activities and programs establish habitat that is also proposed in the ecosystem restoration program, that habitat reduces the amount of habitat that is needed to achieve the ecosystem restoration program goals... Every effort will be made to fully integrate actions being taken by the various state, federal, and local agencies with the CALFED Program."

P. 85: "CALFED seeks to plan for recreation enhancement and, if necessary, to mitigate impacts to Delta recreation resulting from CALFED activities designed to restore other Delta resources"

P. 95: Goals of the Levee Program.

P. 98-90: "Resolution of flood concerns in North Delta requires solution from Interstate 5 downstream to San Joaquin River".

P. 100: Goals of the Ecosystem Restoration Program, in regards to work on publicly owned lands, work with landowners, etc.

Issues of Concern:

The following items have been identified as additional areas of concern, albeit of lessor import than the areas of general concurrence identified above. If directed, staff will forward these comments to CALFED staff for inclusion in the program to be evaluated in the Revised Draft EIR/EIS due to be released mid-1999:

P. 95, Levees, #1: Creation of the Levee Implementation Group. The need for a new entity to oversee the existing, successful levee program should be carefully analyzed (New entity would "assure participation in planning, design, implementation, and management of levee projects".) Currently the levee program is overseen by the Delta Levees and Habitat Advisory Committee under the Secretary for Resources.

P. 96, Levees #7 regarding cost sharing for Delta levee improvements to PL 84-99: Suggest the funding program should reflect and address the differing "ability to pay" of reclamation districts to ensure a Deltawide program, rather than a program implemented only on those islands which are financially able to participate.

P. 97, Water Quality: Suggest addition of specific task to develop and maintain record of existing information about characteristics of sediments in Delta channels (Building upon Category III study by Regional Water Quality Control Board, Department of Fish and Game, and Delta Protection Commission).

P. 99, Water Quality #12 regarding control of total organic carbon in drinking water: Suggest adding technical solutions at drinking water treatment facilities (new, more cost efficient treatment) in addition to control of TOC at the source (agricultural runoff); Concern is that control of agricultural runoff will result in loss of productive agricultural land for holding ponds.

P. 102, Ecosystem Restoration #11 regarding “Aggressively screen existing unscreened or poorly screened diversions on the Sacramento River, San Joaquin River and tributary streams.”; Suggest consideration of Commission’s adopted suggestions to the Corps (October 2, 1997).

P. 102, Ecosystem Restoration, Add a new #18 which would ensure that ERP projects would not adversely impact adjacent and nearby lands (seepage, weeds, endangered species issues, water intakes, etc) or curtail on-going, or normal agricultural practices on adjacent and nearby lands; aka the “good neighbor” policy.

P. 111, Isolated Facility, Ensure adequate time is allowed to implement Phase I improvements and monitor their impacts prior to making further decisions.

P. 113, Finance, Note that Reclamation District cost-share agreements must be approved by elections.

P. 132, Comprehensive Monitoring, Assessment and Research Program (CMARP), Ensure that CMARP is scientifically valid and neutral in evaluating existing conditions and constructed facilities.

P. 136, Implementation of CMARP, Streamflow gage network in the Delta should be enhanced, as well as in the watershed.

Minor Comments on the Revised Phase II Report:

The following are not policy matters, but minor “technical” suggestions to CALFED staff:

P.3: Map should include the Legal Delta boundary

P.9: Re: recreation, the number of 12 million user days per year is low according to numbers generated by a Department of Parks and Recreation survey and 1997 report, and report on the economic impact of recreational boating and fishing in the Delta dated November 1998, which estimate 14.4 million user days by boaters alone.

P. 89: Re: operational criteria for the Delta Cross Channel: add recreation to list (boats use the open channel to travel between Sacramento River and Delta Meadows and points east).

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May 29, 1998

Lester Snow, Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 94236-0001

Subject: Comments on the Programmatic Environmental Impact Statement/Environmental Impact Report, March, 1998

Dear Mr. Snow:

I am writing on behalf of the Delta Protection Commission to submit comments on the Programmatic Environmental Impact Statement/Environmental Impact Report (DEIR) for the CALFED program. The Delta Protection Commission is submitting these advisory comments based on the goals of the Delta Protection Act of 1992 and the policies in the Commission's adopted land use plan for the Primary Zone of the Delta.

The Commission's mandate is to protect and enhance the three existing land uses in the Delta: agriculture, wildlife habitat and recreation; to assure orderly, balanced conservation and development of delta land resources; and to improve flood protection. The challenge to CALFED is to work with the Commission, which represents a broad spectrum of Delta interests, to balance the land uses in the Delta--the "three legs of the stool".

While the Commission supports the overall CALFED planning process and its difficult challenge to resolve conflicting issues concerning water and wildlife in the Delta, the Commission is concerned about the proposed impacts to land uses in the Delta Primary Zone. The currently proposed land use changes would have widespread and detrimental socio-economic impacts on the Delta Primary Zone, which would be exacerbated by the proposed changes in water quality in the South Delta.

These impacts appear to be in violation of one of the six CALFED solutions principles which states "No Significant Redirected Impacts: A solution will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in its entirety, in the Bay-Delta or other regions of California."

Impacts to Agricultural Lands

The CALFED program would have very serious impacts on agricultural land uses in the Delta Primary Zone, and secondary impacts on agriculture-serving business in the Delta region. The Ecosystem Restoration Program Plan (ERPP) proposes to retire from agriculture and restore to habitat between 98,000 and 115,000 acres of land over the next 25 years. About half those lands would be behind levees and about half those lands would be restored to tidal action. As of 1993, there were 491,774 acres in the Delta Primary Zone, of which 378,160 acres were in agricultural use, 57,596 acres in habitat or uncultivated agricultural use (unirrigated grazing), and 51,000 acres were water-covered. For the entire Legal Delta, the area described in the DEIR, the numbers are: 738,493 acres total; 527,309 acres in agriculture; 82,845 acres in habitat or uncultivated agriculture; 61,119 acres of water-covered lands; and 67,219 acres of urban lands.

There are several major areas already owned by public agencies or nonprofit groups, or already planned and designated for restoration to habitat, including Sherman and Twitchell Islands, Prospect Island, Bouldin and Holland Tracts, Stone Lakes Wildlife Refuge, etc, which would result in thousands of acres of agricultural land being converted to habitat behind levees. These projects already in the planning stages appear to meet the goals for habitat enhancement behind levees without the need to acquire additional privately owned lands in the Delta.

Comment: The DEIR should review the ability of the ERPP to meet the goals for new and enhanced habitat behind levees through enhancement and management of currently designated lands, and without acquisition of additional privately-owned lands.

The ERPP includes goals for over 60,000 acres of land to be restored to tidal action to provide fish spawning and rearing habitat in the Delta. Reopening areas to tidal action is only one of many actions recommended to lead to recovery of Delta native fishes, as outlined by the U.S. Fish and Wildlife Service in their November 1996 Recovery Plan. Highest priority actions are (Priority One): increased freshwater flows; protection of the freshwater nature of Delta aquatic habitat; reduced entrainment losses at the State and federal water projects; no net loss of shallow water (defined as less than 3 meters) habitat to dredging; and elimination of harvest of green sturgeon and wild runs of chinook salmon. Development of additional habitat and vegetation zones in the Delta are a Priority 2 action in the Recovery Plan.

Restoration of dry land to shallow water habitat should be only one part of an overall strategy to enhance fish species and aquatic habitat in the Delta. Acquisition and restoration should be implemented over time in conjunction with other key actions designed to meet species population goals which can be developed and monitored as part of the ERPP. Thousands of acres of water-covered lands could be managed and/or enhanced to improve aquatic habitat values. Actions could include: placement of fill to create shallow water habitat; placement of root wads to provide hiding and spawning places; and removal of invasive plants.

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Comment: The DEIR should evaluate an alternative aquatic habitat enhancement program which addresses opportunities to enhance existing water-covered habitat for spawning and rearing habitat for key fish species (Franks Tract; Big Break; Mildred; Little Holland Tract, etc). Sites to be acquired for restoration should be small, isolated areas which would not contribute to a cumulative adverse impact on agricultural land uses in the Delta Primary Zone. In addition, in-channel islands, waterside berms, and engineer-approved trees at the waterside toe of levees would also be suitable sites for habitat enhancement and restoration. Acquisition, restoration, enhancement, and management should be carried out at the same time as other key actions identified by resource management agencies with expertise in fisheries management.

The DEIR indicates that flooding large acres of agricultural land may result in some additional water in the Delta waterways, while warning that "flora that is restored in the Delta will consume much of the water that would have been used by crops". Testimony has been received by CALFED indicating that permanent flooding of Delta islands would result in additional water use--approximately two acre feet above that used for agricultural crops--rather than less, due to evaporation and evapo-transpiration. There is no discussion of the amount of water needed for the proposed restoration areas, and there is no discussion of the source of such water.

Comment: The DEIR should provide more specific information about the amount of water needed to flood islands proposed for restoration, and possible sources and estimated cost of such water.

The State has adopted as policy the need to protect the Delta waters from intrusion from the salty waters of San Francisco Bay. The program which identified and protects the Eight Western Islands (Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb). The ERPP seeks to restore 10% of the leveed lands in the Delta to tidal action. There is no discussion of possible salinity impacts associated with reopening 10% of the Delta to tidal action, nor any analysis of methods or techniques to carry out such a program in a manner that would protect water quality in the Delta for in-Delta uses and for export purposes.

Comment: The DEIR should address the impacts to water quality, particularly possible salinity intrusion, which may result when large areas are restored to tidal action, as proposed in the ERPP.

The DEIR lists mitigation measures proposed to minimize adverse impacts to agricultural lands in the Delta including:

- 1) restore existing, degraded habitat first;
- 2) develop habitat on public land first;
- 3) absent public lands, acquire and restore lands acquired from willing sellers where at least part of the reason to sell is economic hardship (land that floods frequently or levees that are too expensive to maintain);

- 4) for lands for waterside habitat, seek land on islands where the ratio of levee miles to acres farmed is high;
- 5) obtain easements on farmlands which would allow for minor changes in agricultural practices thus increasing the value of crops to wildlife;
- 6) floodplain restoration efforts would include provisions for continued agricultural practices on an annual basis; and
- 7) conversion would occur over an extended time period; the conversion process would include extensive community, landowner, and stakeholder involvement.

Comment: In addition to these conditions, which the Delta Protection Commission supports, the ERPP program should include:

- 1) acquire and/or enhance currently flooded lands to create and/or enhance emergent habitat;
- 2) develop and implement individual management plans for private agricultural properties and develop funds to offset costs of voluntary implementation of such plans;
- 3) develop and implement individual management plans for privately-owned lands managed for wildlife habitat, such as duck clubs and upland hunting clubs, and develop funds to offset costs of voluntary implementation of such plans; and
- 4) develop programs to address stressors to avoid duplication of existing regulatory programs and which address the needs of existing land uses.

Comment: Acquisition and retirement of additional privately-owned agricultural lands should be conditioned to ensure:

- 1) proposed restoration projects shall not adversely impact Delta water quality, particularly salinity levels; and
- 2) proposed restoration projects shall not adversely impact existing uses on adjoining lands or adjacent islands.

The DEIR does not suggest any mitigation for the permanent loss of prime farmlands, although the California Environmental Quality Act (CEQA) indicates that conversion of prime agricultural land will result in a significant effect on the environment. The DEIR indicates that up to 105,000 acres of prime agricultural land would be permanently lost through implementation of the ERPP.

Comment: The DEIR should analyze if there is a need to mitigate the loss of prime agricultural land under CEQA. Possible mitigation could include permanent protection of agricultural lands through conservation easements; these easements could help carry out the goals of the ERPP's wildlife friendly agriculture component, or the watershed management program.

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Comment: The DEIR should analyze if there is a need to mitigate the loss of prime agricultural land under CEQA. Possible mitigation could include permanent protection of agricultural lands through conservation easements; these easements could help carry out the goals of the ERPP's wildlife friendly agriculture component, or the watershed management program.

The DEIR indicates there will be adverse economic impacts in the Delta associated with the retirement of agricultural land for habitat conversion. However, the DEIR reaches the conclusion that the economic impacts will not adversely affect the regional economy, apparently bundling the Delta economy into the Sacramento-Stockton region for analysis. The ERPP alone would result in loss of close to half of the agricultural lands in the Delta Primary Zone.

Comment: The DEIR should evaluate impacts to the economy of the Legal Delta, including property and sales tax impacts, address primary impacts to landowners, and address secondary impacts to laborers, suppliers, processors, associated support industries, etc., when evaluating the economic impacts.

Impacts to Wildlife Habitat:

The Delta's agricultural lands have long been recognized as key seasonal wildlife habitat for migratory waterfowl. The Central Valley Habitat Joint Venture has been working for the last ten years to protect agricultural lands in the Delta, enhance seasonal habitat values, and enhance year round habitat values. The value of flooded agricultural lands versus tidal marsh is rated by program biologists as three times as valuable, largely based on the high caloric value of the agricultural residue available to the migratory waterfowl.

Comment: The DEIR should evaluate the impact to migratory waterfowl of the loss of up to 115,000 acres of agricultural lands to water-covered habitat and managed wetlands.

Agricultural fields and pasture lands are recognized as feeding areas for several important species including the threatened Swainsons Hawk and Greater Sandhill Crane. Minimal description is included regarding these species and their habitat needs.

Comment: The DEIR should evaluate the impact to threatened species such as Swainsons Hawk and Greater Sandhill Crane of the loss of up to 115,000 acres of agricultural lands in the Delta to water-covered habitat and managed wetlands.

The ERPP assumes that restoration of several tens of thousands of acres of agricultural lands to water-covered habitat will result in spawning and rearing habitat needed to delist endangered aquatic species. At this time, there is no or minimal data regarding the value of restored habitat for spawning and rearing of key aquatic species in the Delta. The U.S. Fish and Wildlife Service's plan for recovery of native Delta fishes (November 1996) describes a number of factors deemed critical to enhancing these species; very little scientific research has taken place to determine what criteria are key to development of a successful restoration project. No sites have yet been planned and restored. Areas that have been returned to tidal action have resulted from unplanned levee breaks--Big Break, Franks Tract, Little Holland Tract, Mildred Island, etc, with no management of those sites.

Comment: The DEIR should more thoroughly describe the "suite" of actions deemed critical to restoration of aquatic species, and likely phasing and partnering of restoration activities.

The DEIR indicates that due to the influence of the State and federal project pumps in the South Delta, restoration of habitat should be focused in the North and East Delta. The DEIR states "habitat restored in the south Delta would have the least value to Delta species. Restored habitat in the central Delta would also be of minimal value..." (P. 7.1-37).

Comment: The DEIR should evaluate the value of habitat restored in the Central and South Delta as part of a program to restore general ecosystem health in the Delta, rather than locating all aquatic habitat restoration in the North and East Delta to avoid impacts of the project pumps.

The DEIR states that restoration of large areas to wetland habitat will increase the amount of available mosquito breeding habitat and suggests integrating various mosquito control methods. The DEIR notes that mitigation measures may not be adequate to reduce impacts to less-than-significant levels (page 8.8-13).

Comment: The DEIR should ensure that any project which could potentially result in increased mosquito breeding habitat be reviewed by the local mosquito and vector control district, and conform to any site specific conditions or best management practices recommended or required by that district. The issue of funding mosquito control district services should be negotiated prior to constructing habitat projects.

Impacts to Recreation:

The DEIR describes a number of actions which could be implemented to protect habitat and habitat values which would affect recreational boating activities. Actions include: adoption of speed zones; and temporary, season or permanent closure of Delta waterways.

Comment: The DEIR should outline the circumstances and legal authorities which would be exercised to implement the controls on boating in the Delta described in the DEIR.

The DEIR states that if recreational facilities are displaced, mitigation should include the relocation of a similar facility in a nearby location.

Comment: The DEIR should explain how this program would be exercised, and how suitable locations for replacement facilities would be identified, and approvals obtained.

The DEIR states that the restoration and redesign of existing levees and the design of new levees should accommodate vehicular access and parking for shoreline fishing, boat launching, swimming, hiking, bicycling, and wildlife viewing.

Comment: The DEIR should more thoroughly describe the "suite" of actions deemed critical to restoration of aquatic species, and likely phasing and partnering of restoration activities.

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The DEIR states that the restoration and redesign of existing levees and the design of new levees should accommodate vehicular access and parking for shoreline fishing, boat launching, swimming, hiking, bicycling, and wildlife viewing.

Comment: The DEIR should describe how such sites would be supervised, and how appropriate support facilities such as restrooms and trash receptacles would be provided and maintained. The DEIR should also describe how appropriate sites would be identified to minimize conflicts with agricultural uses and wildlife habitat values.

The DEIR does not address the requirements of the Davis-Dolwig Act of 1961 which specifies that planning for public recreation use is to be part of project formulation for activities in connection with State-sponsored water projects. No such component is included in the description of the CALFED conveyance project elements.

Comment: The DEIR should be amended to include reference to the Davis-Dolwig Act of 1961, and to include a public recreation component for the CALFED program.

Impacts to Delta Levees:

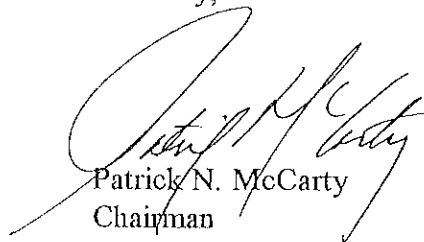
The DEIR describes the proposed improvement to the existing Delta levees--primarily to the non-project levees-- which would bring those levees to a more stable standard, PL-99. PL-99 is an agricultural standard which ensures that levee crowns are one and a half feet above the 100 year flood elevation and include minimum slopes of two to one on the water side and slopes of three to one to five to one on the land side depending on the soil conditions.

Comment: The proposed standard, PL-99, is included as the recommended standard for Delta non-project levees in the Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta.

Summary:

The Delta Protection Commission supports the CALFED concept of "getting better together". The Commission wants to continue to participate in the CALFED process, and work with CALFED and its staff to develop a reasonable and effective overall program which will protect and enhance the unique resources of the Primary Zone of the Delta, while moving towards the goals of the CALFED program.

Sincerely,



Patrick N. McCarty
Chairman

